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RECENT CONSTITUTIONAL CHANGES IN NEW ENGLAND

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By reason of their age, their brevity, their rigidity, and their retention of certain archaic features, the six New England constitutions form a distinct class among our State constitutions. Three were drafted in the eighteenth century and the latest only in 1842. All are little more than bare frames of government, prefaced by declarations of rights. Rhode Island enjoys the distinction of possessing the shortest of State constitutions. All fall far below the average length, and they present an almost startling contrast to the bulky new constitution of Oklahoma. At a time when the legislature and the convention are being more frequently employed for the framing of fundamental laws, the process of amending five of the New England constitutions continues to be peculiarly difficult and slow. Maine interposes fewest obstacles to amendments in the organic law. Two-thirds of both chambers of the Maine legislature may propose amendments; a simple majority of those voting on the referendum suffices to adopt them. In all the other States except New Hampshire, an amendment must pass two successive legislatures—by majorities which vary from State to State—before it may be submitted to the electors for ratification. The New Hampshire constitution requires the sense of the voters to be taken every seven years as to the necessity of revising the organic law. If a majority of the electors voting favor revision, the general court must call a convention for that purpose. New Hampshire requires the excessive majority of two-thirds on the referendum, and Rhode Island three-fifths, for the adoption of any amendment. Elsewhere a simple majority of those voting suffices.

It is evident that frequent changes were not contemplated by those who drafted the organic laws of New England. The exercise of the

¹Professor Dealey gives the average length as 15,500 words. Cf. "Our State Constitutions," pp. 1, 83.

law-making power was subjected to few restrictions. Contingencies which would necessitate a re-shaping of the organs of government and a re-adjustment of their relations were not anticipated. The difficulty of amending these New England constitutions, coupled with what I shall for the present term vaguely "New England conservatism," accounts for the retention of many outworn provisions on the one hand and the absence of much-needed reforms on the other.

To enumerate the recent constitutional changes in New England, therefore, is no very arduous task. Vermont has not amended its constitution since 1883. Massachusetts has adopted one amendment only within the last fourteen years; viz: that of 1907, which gives the governor power to remove from office notaries public and justices of the peace. New Hampshire has held but one convention since 1889. In 1903, the following four amendments were ratified by the requisite two-thirds majority: 1st. The right to vote and to hold office was restricted to persons who can read the constitution in the English language and who can write. This provision was not to apply to persons already having the right to vote nor to persons sixty or more years of age. New Hampshire simply followed the example which Massachusetts set as long ago as 1857 and which Maine followed in 1893. Connecticut made ability to read a qualification for suffrage by an amendment in 1897. 2d. Candidates for nomination to office in the militia of New Hampshire must now qualify before an examining board before being recommended to the governor by the field officers. 3d. The right to tax franchises and property when passing by will or inheritance was specifically added to the power of the general court to assess public charges on polls and estates. 4th. All just power possessed by the State was granted to the general court to enact laws to prevent monopolies and illegal combinations which destroy free and fair trade, to control and regulate trusts and corporations doing business within the State, and to prevent fictitious capitalization.

Two amending articles have been added to the constitution of Rhode Island within the last fifteen years. Article XI, adopted in 1900, provided for an annual session of the legislature at Providence, and increased the per diem allowance of members of the legislature from one to five dollars, on condition that no compensation or mileage should be allowed for more than sixty days' attendance in any calendar year. Provision was also made in this article for changing State elections from April to November, and for filling vacancies

in State offices which should occur through death, temporary incapacity, failure to elect, or other cause. Article XII, adopted in 1903, bestowed upon the Supreme Court, in specific language, final revisory and appellate jurisdiction upon all questions of law and equity, and the power to issue prerogative writs. The original provision of the constitution gave to the Supreme Court such jurisdiction as might from time to time be prescribed by law. Of the pending amendment to the constitution of Rhode Island, I shall speak in another connection.

Connecticut has added four amendments to her constitution within the last ten years. A much-needed article adopted in 1901 substituted plurality elections for majority elections in the case of State officers chosen by popular vote, thus preventing the legislature from defeating candidates who are the obvious choice of the people, as happened in four out of ten elections by the legislature within the previous twenty years.² Another amendment of the same year (1901) provided for an increase in the number of Senatorial districts. An amendment of 1828 had provided for not less than eight nor more than twenty-four districts, without specifying the number of Senators to be elected from each, though stipulating that each county should have at least two senators. The amendment of 1901 provides for a senate of not less than eighteen nor more than twenty-four members, one from each district, and at least one from each county. Two amendments of the year 1905 are of less importance: one permits towns to elect local officers annually or biennially, as they may choose; another permits the use of voting machines so long as the right of secret voting is preserved.

Finally, Maine has just amended her constitution for the first time in twelve years. An amendment of the current year establishes what is termed "a people's veto through the optional referendum, and a direct initiative by petition." No act or joint resolution of the legislature is to take effect until ninety days after adjournment, except in cases of emergency, when by a two-thirds vote of all the members elected to each house the legislature may otherwise direct. An emergency bill is defined as a measure immediately necessary for the preservation of the public peace, health, or safety; it must not include an infringement of the right of home rule for municipalities, nor a franchise for a longer term than one year, nor a provision for

² Cf. article by G. S. Ford in *Municipal Affairs*, Vol. VI, on the "Rural Domination of Cities in Connecticut."

the sale, purchase, or renting of real estate for more than five years. Upon petition of 10,000 electors filed with the Secretary of State within ninety days after the adjournment of the legislature, the governor must submit the designated bill or designated part of a bill, to a popular vote, either at the next general election or at a special election. A bill, resolve, or resolution may be initiated upon petition of 12,000 voters. Unless enacted by the legislature, this measure must be submitted to the electors, together with any competing bill which the legislature may devise. In these instances the governor's veto power extends only to an initiative measure which has been passed by the legislature. Should his veto be sustained by the legislature, the measure must be submitted to the referendum. Proper safeguards are provided for the genuineness of the signatures to a petition. Petitions must contain the full text of the measures requested or proposed, but the Secretary of State is to prepare the ballots so "as to present the question or questions concisely and intelligibly." Measures initiated by petition may include bills to amend or repeal emergency legislation. The amendment also permits municipalities to establish the initiative and referendum on local ordinances.

All proposals to give the electors the right to initiate amendments to the constitution were defeated in the legislature, largely because, so it is said, the advocates of prohibition of the liquor traffic were unwilling to expose the prohibitory amendment now in the constitution to the hazards of a popular vote. Yet both parties finally united in submitting the recently adopted amendment to the people. There was almost no public discussion of the proposed innovation. The press, with a few notable exceptions, ignored the matter. The most aggressive work in behalf of the initiative and referendum was conducted by the Maine Referendum League, strongly supported by the trade-unions and the State Grange. The adoption of the amendment, however, was due quite as much to the indifference of the great body of voters. The total vote fell short of the gubernatorial vote by about forty per cent. In a conservative community like Brunswick, the amendment was adopted by a vote of 472 to 29 in a total poll which was less than one half of the vote cast at the same time for governor. A study of the vote by counties, sections, and towns reveals much the same indifference. All the sixteen counties, and all but two of the cities and towns of more than 4,000 inhabitants, were carried for the amendment. There is no observable sectional diver-

gence in the vote, as between coast and interior, for example, or between old and new towns. Wells and York, two of the oldest towns in the State, which possess about the same sort and number of inhabitants, voted, the one for and the other against the amendment, by almost precisely the same majorities.

In stating thus somewhat perfunctorily the positive changes in the constitutions of New England, I am well aware that I have told but half of the recent constitutional history of at least three of these States. The unsuccessful attempts at amendment and revision are not the least interesting and instructive aspects of the subject. I have already said that the framers of the New England constitutions did not contemplate frequent changes in them. Why should they have done so? Their New England was singularly homogeneous; the chief occupations were still agriculture and commerce; manufacturing was in its infancy; there were no dominating urban centers. When the latest of the constitutions was drawn (that of Rhode Island) Providence, the second city in New England, had less than 24,000 inhabitants. New England was still rural; the characteristic group settlement was the small town. It was natural, then, that the constitutions should make large use of the town as the basis of administration and government; and it was just as inevitable that by way of reaction against their colonial experience, they should have concentrated large powers in the legislature, whose representation was for the most part based upon the town as a unit. Hence that lamentable maladjustment of representation to population which has come about in at least three of the States of the New England of our day. I invite your attention first to the abortive constitutional convention of 1902 in Connecticut.

When the constitution of 1818 was drafted, Connecticut was still largely an agricultural community, whose life centered in the historic small towns. Local pride, fortified by the natural conservatism of agricultural communities, led to the perpetuation of the system of representation in the legislature which had begun with the Fundamental Orders of 1639, viz: a system based upon the federation of towns. The towns were equally represented in the House of Representatives, while the Senate was composed of members elected by general ticket for the whole State. Subsequent amendments provided for the election of Senators by districts, as we have seen; and gave to each town of five thousand inhabitants two representatives in the House, but no new town was to have a representative unless

it had twenty-five hundred inhabitants, though old towns of less than five thousand were to keep their existing representation, regardless of their population. This would seem not to have been an inequitable apportionment at the time, since the average population of the 122 towns was 2,300 and only nine exceeded 4,000.³

In the following decades, Connecticut passed through an industrial revolution which made the town system of representation, based on agricultural conditions, archaic and irrational. Large manufacturing cities came into existence which politically were still classed as small towns. New Haven, the largest city, with a population of 108,027, shares with Union, the smallest town, with a population of 428, the privilege of sending two representatives to the House.⁴ Eleven large manufacturing cities with one-half the entire population of the State have but twenty-two votes in a House of 255 representatives. A majority of the members of the House represent towns containing only one-ninth of the population of the State. This discrepancy is all the more marked by reason of the fact that fifty-three of the 168 towns showed a loss of population in the decade 1890-1900, and of these 53 all but two had less than 3,000 inhabitants. The absolute increase of population for the whole State in the same decade was 162,162, of which the eleven largest cities furnished about three-fourths.

The Constitutional Convention of 1902 was summoned in full view of these glaring inequalities. Yet 127 out of the 168 towns voted against the convention and only the vote of the large cities carried the day. It had been determined that each town should send one member to the convention, so that the assembled convention could muster only forty delegates whose constituents had voted for the convention. Not to dwell upon the obvious fact that the small towns controlled the convention, I will simply recall to your minds the final proposition relating to the apportionment question. It was a hastily-drawn and unsatisfactory compromise to the effect that each town of less than two thousand inhabitants should have one representative; each of two thousand and less than fifty thousand should have two representatives; each town of fifty thousand and less than one hundred thousand should have three; each town of one hundred thousand should have four and an additional representative for

³ Cf. *Municipal Affairs*. Vol. VI, p. 222.

⁴ These figures are taken from the Census Returns of 1900.

every fifty thousand in excess. The Senate was to be increased to forty-five members. The revised constitution was submitted to the people only to be emphatically defeated by a vote of nearly three to one.⁵ The hope then expressed, six years ago, that what a constitutional convention had not been able to effect would be accomplished piecemeal, by successive amendments, has not been realized. Connecticut is still unreformed.

A similar reluctance to apportion representation on the basis of population is manifest in New Hampshire, though the maladjustment is less grievous. Besides the four amendments to which I have already alluded, the convention of 1902 submitted six others to popular vote,⁶ one of which contemplated a readjustment of representation in the House of Representatives. No change in the Senate was proposed, though it may be remarked in passing that the method of apportionment in that chamber is unique. The twenty-four members are apportioned among twenty-four districts which must be "as nearly equal as may be"—to quote the constitution—in respect to "the proportion of direct taxes paid by the said districts." The unit of representation in the House is the town or city ward of six hundred inhabitants. A population of eighteen hundred entitles the town or ward to two representatives, and so on, the mean increasing number for any additional representative being twelve hundred. Places of less than six hundred inhabitants may be authorized by the general court to elect a representative "such proportionate part of the time as the number of its inhabitants shall bear to six hundred." In the year 1901, this apportionment gave the House the very large membership of three hundred and ninety-seven. The system discriminates against the large urban centers and in favor of the one-member constituencies. These small places have one hundred and sixty-eight seats in the House, where an equitable apportionment on the basis of population would give them but one hundred and forty-six. The loss is borne by the forty-one towns or cities having more than one representative in the House.⁷ It is interesting to note

⁵ Cf. an article by Charles H. Clark, a member of the convention, in the *Yale Review*, Vol. XI.

⁶ Among these was a proposition to extend the suffrage to women. It was defeated by a majority of five to three. An amendment to sever the slender ties which still united church and state received a majority of the votes cast on the referendum, but failed to secure the requisite two-thirds for adoption.

⁷ Cf. Dealey's "Our State Constitutions," pp. 79-80.

in this connection that of these one hundred and sixty-eight one-member boroughs, eighty-eight showed a decline in population between 1890 and 1900; yet in the same decade the State as a whole gained. The decrease was in towns of less than three—in most cases, of less than two—thousand, while the eleven manufacturing cities furnished nearly the total increase in population. The only change which the convention of 1902 proposed in this mode of representation was an increase of the qualifying unit from six hundred to eight hundred, and an increase of the mean ratio from twelve to sixteen hundred, with provision for the union of small places to form one-member constituencies. This was a change in degree, not in kind; yet it failed of adoption. A large majority of the electors favored the amendment, but not a two-thirds majority.⁸

Conditions in Rhode Island are too well understood to need extended description. Suffice it to say that the present system of representation discriminates not only in one chamber but in both, in favor of the small towns as against the urban centers. The senate consists of one member from each town or city. This puts the city of Providence, with nearly two hundred thousand inhabitants, on an equality with a town like Exeter, which numbers less than one thousand souls. In the House, each town or city is entitled to one member, but no town or city may have more than one-sixth of the whole number of members, which is at present fixed at seventy-two. This arrangement gives the city of Providence only twelve, when it should have thirty members; while seventeen towns which fall below the ratio should have four, instead of seventeen, members. Moreover, eleven of these towns decreased in population in the decade before the last census, while the five largest cities, against which such heavy discriminations are made, furnished nearly six-sevenths of the total increase of population for the State.

A pending amendment in Rhode Island holds out some slight prospect of improvement. It is proposed to increase the membership of the House to one hundred and to permit a town or city to have one-fourth instead of one-sixth of the total number. But each town or city is to retain its ancient right of representation, no matter how far its population approximates to zero; and no change in the constitution of the senate is under contemplation. It may be noted in passing that this same pending amendment extends the veto power to the Governor which only a two-thirds vote of each house may override.

⁸ The vote was as follows: Yes, 20,295; No, 13,069.

Of the other New England States, Massachusetts alone apportions representation in both houses on the basis of population; Maine has in general followed the example of the parent State, but discriminates somewhat in favor of the rural towns; Vermont discriminates heavily in favor of the small towns as against the larger urban communities, but no revolt against the system has yet made sufficient headway to appear in the form of a proposed amendment to the constitution. Indeed, the strategic position which representatives of small towns occupy in the legislatures of Vermont, Connecticut, and Rhode Island makes it exceedingly difficult for any thoroughgoing reform of representation to make headway. Nothing short of a self-denying ordinance will initiate amendments in these State legislatures.

The tenacity with which the small towns cling to their ancient right of representation and the obstinacy with which they resist a more equitable apportionment in accord with modern conditions, has been ascribed commonly to New England conservatism, but no one seems to have taken the pains to point out the probable ground for this conservatism. The ultimate reason must be sought, I believe, in phenomena which are social or economic rather than political. It is well known to every student of New England history that its settlement was by groups rather than by individuals. The groups were the product of several forces. Ecclesiastical organization coupled with agrarian interests and environmental conditions, made the town the familiar type of settlement. The early town meetings are hardly to be distinguished from church meetings on the one hand and from proprietors' meetings on the other. In the towns, therefore, there was an interlocking of interests which created a consciousness of social identity and a solidarity of feeling which projected itself far into the eighteenth and even into the nineteenth century. Later the growth of large urban centers as the result of the industrial revolution and the rapid development of the public domain in the West, drew heavily upon the aggressive element in the population of the small towns. Those who were left to till lands which now yielded diminishing returns, grew not less but more tenacious of their traditions. At the same time, the new urban communities began to receive an ever-increasing number of immigrants from foreign lands. In the twelfth census, four of the New England States were numbered among the sixteen States which had the largest percentages of foreign born. All the New England States save Vermont, showed a relative increase of foreign

born persons. This was true of only three other States in the Union. In Massachusetts, New Hampshire, Rhode Island, and Connecticut, the average percentage of foreign born in the cities to the total population of these States was higher than that of any other four States. Moreover, it is well known that the voting strength of the foreign born is proportionally greater than that of the total native stock. One in every two foreign born persons is a potential voter, while only one in every four native born is a voter.⁹

It would not be strange, then, if the native rural New Englander felt the increasing foreign population in the cities as a menace to his political and economic well-being. If his economic resistance to depression in the social scale is measured, as some think, by the decreasing size of his family, it is possible that his resistance to a more equitable apportionment of representation measures his political distrust of the foreigner in the urban centers. Hence, with the tenacity of his Puritan forefathers, he has entrenched himself in his last political stronghold.

⁹ Cf. Commons, "Races and Immigrants in America," pp. 190-191.